

NEBRASKA DEPARTMENT  
OF INSURANCE

MAR 15 2001

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA	)	Cause No.: A-1338
DEPARTMENT OF INSURANCE,	)	
	)	
PETITIONER	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
vs.	)	RECOMMENDED ORDER
	)	AND ORDER
TODD E. HOINS,	)	
	)	
RESPONDENT.	)	

This case commenced with the filing of a Petition and Notice of Hearing on June 18, 1998 by the State of Nebraska Department of Insurance ("Department") against Todd E. Hoins ("Respondent"). Said Petition was amended on October 17, 2000. In the Amended Petition and Notice of Hearing, the Department alleged that Respondent's resident insurance agent license should be revoked or suspended pursuant to Neb. Rev. Stat. §44-4028(8) because of a felony conviction on September 26, 2000 in the District Court of Adams County. The case was continued a number of times prior to hearing by agreement of the parties.

This matter came on for hearing on the 12<sup>th</sup> day of February, 2001, before Christine M. Neighbors, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance ("Director"). The Department was represented by its attorney, Linda Sanchez-Masi. Respondent was present and represented by his counsel, Arthur R. Langvardt. The Rules of Evidence were requested and the hearing was governed accordingly. The proceedings were tape recorded by Stacey Bellefeuille, a licensed Notary Public. Documentary evidence and oral testimony were received, after which the

case was argued and submitted to the Hearing Officer and the matter was taken under advisement.

On or about February 16, 2001, the Hearing Officer requested that the taped testimony from the February 12, 2001 hearing be transcribed. It was discovered that the testimony could not be transcribed due to a mechanical failure in the recording process. As a result, a telephonic rehearing was set for March 8, 2001, upon agreement of both parties. The telephonic rehearing was held March 8, 2001, and was recorded by Stacey Bellefeuille, a licensed notary public. At that rehearing, Linda Sanchez-Masi again represented the Department and Arthur Langvardt again represented the Respondent. Respondent was not present and did not participate in the rehearing.

The Hearing Officer has reviewed the evidence and the law applicable to this case, and submits to the Director the following Findings of Fact, Conclusions of Law, and Recommended Order.

#### I. FINDINGS OF FACT

1. Respondent is a licensed resident insurance agent whose registered address with the Department is P.O. Box 227, Hastings, Nebraska 68902. Respondent is licensed to sell the lines of life insurance and annuities, and sickness, accident and health insurance. Respondent is an appointed agent with various insurance companies, including but not limited to, Allianz Life Insurance Company of North America, Business Men's Assurance Company of America, Conseco Senior Health Insurance Company, Jefferson-Pilot Life Insurance Company of America, Midland National Life Insurance Company and Mutual of Omaha Insurance Company.

2. The Department filed an Amended Petition and Notice of Hearing on or about October 17, 2001, alleging a violation of Neb. Rev. Stat. §44-4028(8), which authorizes the Director to revoke or suspend any person's insurance agent license if the Director determines that such person has been convicted of any felony or Class I, II, or III misdemeanor evidencing that such person is not worthy of the public trust. Respondent received service of the Amended Petition and Notice of Hearing.

3. On or about September 26, 2000, after trial to the court, Respondent was found guilty of theft by deception, a Class III felony, in the District Court of Adams County, Nebraska. A certified copy of the Waiver of Jury Trial and the Journal Entry and Order were received in evidence as Exhibits 1 and 2.

4. On or about January 11, 2001, Respondent was sentenced to eighteen (18) months probation; payment of a five thousand dollar (\$5,000) fine; perform 100 hours of community service; and payment of court costs. A Certificate of Transcript by the District Court of Adams County, Nebraska including the Journal Entry setting forth the sentencing was received in evidence as Exhibit 4 with said Journal Entry received in evidence as Exhibit 3.

5. A Notice of Appeal was filed by Respondent in the District Court of Adams County, Nebraska on February 7, 2001, evidencing Respondent's intent to appeal the judgment and sentence to the Nebraska Court of Appeals. A copy of the Notice of Appeal was received in evidence as Exhibit 5.

6. Respondent argues that because he has appealed the District Court's judgment and sentencing to the Court of Appeals that it is not appropriate for the

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Department of Insurance to pursue suspension or revocation of his insurance agent's license until the appeal has run its course. Respondent offered Exhibits 6, 7, 8 and 9 during the hearing in an apparent attempt to show that the judge in the District Court of Adams County had erred in finding Respondent guilty of theft by deception. The Hearing Officer finds that these exhibits are, in essence, an attempt to re-try a criminal case and, as such, the exhibits are not relevant to the issue at hand. Sedivy v. State of Nebraska, 5 Neb. App. 745, 567 N.W. 2d 784 (1997).

7. Respondent also argued in closing that even if the Department can suspend or revoke his agent's license during the appeal process, this felony is not of a nature that evidences he is not worthy of the public trust. Respondent was convicted of theft by deception in the amount of \$3,300. The victim of the theft was an insurance client and the theft occurred during the course of Respondent's insurance business. The circumstances surrounding this conviction cause the Hearing Officer to believe that Respondent's actions not only evidence he is not worthy of the public trust, but his actions also indicate that he has not demonstrated trustworthiness and competency to transact business in such a manner as to safeguard the public.

#### CONCLUSIONS OF LAW

1. The Department has subject matter jurisdiction over this matter and over Respondent pursuant to Neb. Rev. Stat. §44-101 and §44-4001 et. seq.

2. Respondent, as a licensed resident insurance agent, may have his license suspended or revoked after hearing pursuant to Neb. Rev. Stat. §44-4028(8) by virtue of

his having been convicted of one felony count on September 26, 2000 in the District Court of Adams County, Nebraska.

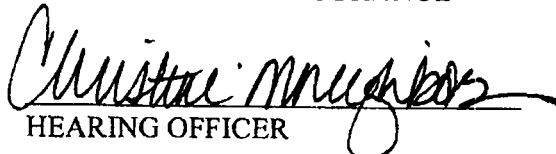
3. Respondent violated Neb. Rev. Stat. §44-4028(11).

RECOMMENDED ORDER

1. Respondent's resident insurance agent license be revoked.
2. Respondent immediately surrender his insurance agent license to Beverly Creager, Administrator of the Nebraska Department of Insurance Licensing Division.

Dated this 15<sup>th</sup> day of March, 2001.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

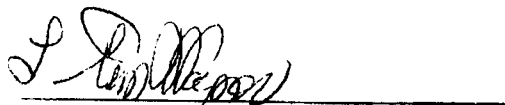
  
HEARING OFFICER

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of the State of Nebraska Department of Insurance vs. Todd E. Hoins, Cause No.: A-1338.

Dated this 15<sup>th</sup> day of March, 2001.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

  
L. TIM WAGNER  
DIRECTOR OF INSURANCE

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Respondent by mailing a copy to Respondent at P.O. Box 227, Hastings, NE 68902 and a copy to Respondent's counsel, Arthur Langvardt, at Langvardt & Valle, P.C., 422 N. Hastings Avenue, Suite 105, Hastings, NE 68901 on this 15<sup>th</sup> day of March, 2001.

Stacey M. Billysmith